

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

FERNANDO S.,

Claimant,

OAH No. 20060060280

vs.

HARBOR REGIONAL CENTER

Service Agency.

DECISION

Administrative Law Judge Deborah Myers, State of California, Office of Administrative Hearings, heard this matter in Torrance, California on July 27, 2006.

Claimant was represented by his mother, Josefina S. She was assisted by Virginia De Cabrera, certified interpreter number 100591. Claimant's older brother Ricardo S. was also present and assisted his mother.

Hiram Bond, Program Manager, represented the Service Agency.

The service agency submitted a brief, which is marked for identification as Service Agency's Exhibit J. The record was held open until August 14, 2006 to allow Claimant's mother to file a Due Process Request with the claimant's school district and to file and serve a copy with the Office of Administrative Hearings and the Service Agency. No Due Process Request was received by the deadline. The record was deemed closed on August 14, 2006.

ISSUE

1. Whether Harbor Regional Center should provide or pay for legal services and other costs for Claimant's mother to obtain a conservatorship over Fernando S., which conservatorship is believed would facilitate advocacy on behalf of Claimant before the local school district.

FACTUAL FINDINGS

1. Claimant is 18 years old. He lives with his mother and father, and his brother and sister. Claimant speaks Spanish at home and English in school. He is a consumer of the service agency under the diagnosis of mild mental retardation.

2. Claimant attends 12th grade at the Long Beach Unified School District, and receives special education services in the form of a special day class and the extended school year program. According to a December 8, 2004 Psychological Assessment, his Weschler Adult Intelligence Scale- III Edition (WAIS-III) Full Scale IQ was 57. Claimant's Woodcock-Johnson score placed him at a grade level of 7.4, while his Wide Range Achievement Test-Third Revision (WRAT-3) scores placed him at a grade level of 7. He read at the 2nd grade level and his math skills were at the 3rd grade level. According to his December 1, 2005 Individualized Education Plan (IEP) and Individualized Transition Plan (ITP), he read at a 3.7 grade level and was fluent at a 4.2 grade level. His projected date to complete the requirements for a Certificate of Accomplishment was June, 2006. However, Claimant remains in 12th grade.

3. Claimant's mother and brother have been diligent and steadfast advocates for his special education needs. She credits his progress to her constant battles with the school district for his Free and Appropriate Public Education (FAPE.) She firmly believes that without her continued assistance, Claimant, now an adult, will not be able to advocate and navigate his own way through the special education system, of which he is eligible until he graduates or reaches 22 years of age. For this reason, she seeks funds from the service agency to pay for legal services for her to become the conservator of his educational rights, which she cannot afford. Claimant's mother believes that an educational conservatorship will enable her to represent him in the special education system since he is now an adult. She did not present proof to establish that Claimant was otherwise incompetent.

4. Claimant's Individual/Family Service Plan¹ (IFSP), prepared after a meeting held on July 11, 2005, identified that he was in the 12th grade in a special day class with 10 students, but not receiving speech and language services. The "Desired Outcome" was to have him "progress, get a diploma, go to college and have a career." The "Plan for Client/Family" was "Mother is active with Fiesta Educativa." The "Plan for Community Supports" was "[t]o take advantage of local educational resources." The "Plan for HRC Supports" was to "[a]ttend all IEP's."

5. Claimant's mother testified credibly that her son's service coordinator failed to help her son with his special education needs. The service coordinator failed

¹ Instead of using the Lanterman Act designation of Individual Program Plans (IPP), Harbor Regional Center uses the name IFSP, regardless of whether the consumer receives services under Early Intervention or under the Lanterman Act.

to attend all of her sons' IEPs as required by the current IFSP. Claimant's mother did admit that the service coordinator was present for the January 2006 mediation with the school district, but he did not participate, intervene, or say anything.

6. Because Education Code section 56041.5 transfers a student's rights from the parent to the student upon reaching the age of 18, the service agency prepared an Assignment of Educational Decision-Making Authority form (Exhibit G) which allows the transfer of those educational rights to a designated assignee. This authorized representative may then represent the Claimant in all aspects of his educational decisions, including filing due process complaints and attending all IEP meetings. This Assignment is virtually free, and can be terminated at any time by the Claimant. The service agency contends that the Claimant can assign his educational right to his mother, or any or designee, and thus meet the Claimant's needs in a less restrictive manner than a conservatorship, which require a finding that the Claimant was mentally incompetent. Claimant's mother is not convinced this assignment of rights will satisfy the school district. However, she never presented the executed assignment to the school district, and therefore did not establish the assignment was insufficient for her son's educational advocacy needs.

7. The service agency also allowed Claimant's mother to meet with their staff attorney advisor. That attorney advised her on the process of obtaining a conservatorship and provided her with a low-cost referral to another legal provider.

8. The service agency does not believe a conservatorship is appropriate for Claimant as he is competent and functioning well. The service agency contends that the assignment of rights is the most cost effective method of meeting Claimant's goals and that there is a generic option they are required to explore before funding a service. The service agency is concerned that a conservatorship will unnecessarily impair Claimant's ability to function independently.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Act, (Lanterman Act) Welfare and Institutions Code (Welf. & Inst. Code) section 4500 et seq., the State of California accepts responsibility for persons with developmental disabilities.² As defined in the Act, the Service Agency must provide persons with developmental disabilities with services and supports in natural community settings which promote the consumer's participation in their educational decisions. (Welf. & Inst. Code §4501.) Persons with disabilities are entitled to an appropriate program of publicly supported education and to the promotion of their ability to make choices in their education. (Welf. & Inst. Code § 4502, subds. (c), (j).)

² Welf. & Inst. Code §4501.

2. These services and supports must be directed toward the alleviation of a developmental disability, toward the habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive lives. (Welf. & Inst. Code § 4512, subd. (b).) The services and supports listed on the IPP may include “education” and “advocacy assistance.” (Ibid.)

3. The Lanterman Act requires that the Service Agency have special education expertise to assist the consumer in advocacy and support when families seek appropriate educational services from a school district. (Welf. & Inst. Code § 4640.6, subd. (g)(2).)

4. The Service Agency is required to secure needed services and supports and to advocate for and protect the civil, legal, and service rights of persons with developmental disabilities. (Welf. & Inst. Code §4648, subds (a), (b)(1).)

5. The Service Agency is required to explore generic resources and the most cost effective means of fulfilling their obligations to the consumer. (Welf. & Inst. Code § 4646, subd. (a).)

6. Upon reaching the age of 18, the rights of an individual with exceptional needs receiving special education services are transferred from the parents to the student. (Ed. Code § 56041.5.)

7. The Lanterman Act requires the Service Agency to achieve the stated goals and objectives in Claimant’s IPP. (Welf. & Inst. Code §4648.)

8. The Service Agency established that the proposed Assignment of Educational Decision-Making Authority form (Assignment), Exhibit G, is the most cost-effective means of addressing Claimant’s educational needs, as they are required to accomplish as set forth in Legal Conclusion 4. The Assignment is also a less restrictive alternative than the conservatorship would be, allowing Claimant greater independence and self-sufficiency, as the Lanterman Act contemplates as set forth in Legal Conclusions 1 and 2. In the absence of proof that the proposed Assignment is ineffective to accomplish the Claimant’s IPP goals and objectives, then the proposed Assignment is the more appropriate method of transferring his rights and allowing his authorized designee to assist him in the special education realm.

9. Claimant did not establish that the Education Code prohibited an adult special education student from assigning his/her educational rights to an authorized representative by way of the proposed Assignment.

10. The Service Agency acknowledged its obligation to advocate on behalf of Claimant at IEP meetings with the school district. Such advocacy might assist

Claimant's mother to use the Assignment and obviate the need for further Fair Hearings on the appropriate level of advocacy provided.

ORDER

1. The service agency will not be required to provide funds for legal services for a conservatorship for the Claimant at this time. In the event that the proposed Assignment is executed by Claimant and is found to be insufficient to transfer his educational rights to his designee, then the Claimant shall be entitled to file a new Fair Hearing Request, without prejudice, to re-open such issue.
2. The service agency shall make available to Claimant the Assignment of Educational Decision-Making Authority form identified as Exhibit G. The service agency shall arrange for their staff attorney advisor to carefully explain the terms of the Assignment and its legal significance.
3. The Service Agency shall advocate before the school district, at Individualized education Plan meetings, and other meetings, on behalf of Claimant through an individual with expertise in the area of special education.

DATED: August 24, 2006

DEBORAH MYERS
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.